

ARGUMENTS/REMARKS

Ownership of this application has changed by virtue of an assignment recorded at Reel 020035, Frame 0641. A copy of the pertinent recordation summary is attached. In addition, a Power of Attorney and Correspondence Address Indication Form is also enclosed along with the Statement Under 37 C.F.R. 3.73(b).

Applicants now respectfully request reconsideration of the rejection of August 22, 2007. The rejection was in response to applicants' Declaration under 37 C.F.R. 1.131 showing that applicants' invention was made prior to the effective date of the principal citation, the U.S. patent application publication of Shoemaker et al. The Shoemaker et al. publication has an effective date of June 14, 2001. The evidence is in the form of laboratory notebook pages that applicants have submitted demonstrating that applicants' invention was made at least twenty months before the effective filing date of the Shoemaker publication.

In the rejection of August 22, 2007 the Examiner stated that the specific species disclosed in the Declaration is not a "generic disclosure of the claims" and that "the declaration was insufficient because it has not been notarized." Applicants respectfully traverse the rejection.

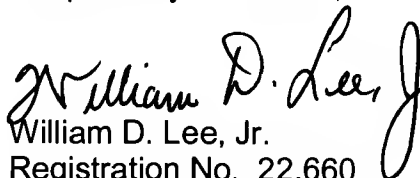
In 37 C.F.R. 1.131 it is stated that the owner of the patent application "may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference. . . ." Applicants have submitted such a declaration and it need not be an affidavit as clearly stated by Rule 131. The declaration concludes with paragraph 4 thereof and contains the required wording for a declaration submitted in lieu of an affidavit.

All of the rejections in the prior Office Action are based on the Shoemaker et al. reference alone under 35 U.S.C. 102 and U.S.C. 103, or on Shoemaker et al. in combination with another reference under 35 U.S.C. 103. However, Shoemaker et al. cannot now be applied as a reference and, therefore, applicants respectfully request that the rejection be withdrawn.

In the Office Action of August 22, 2007, the Examiner stated that the declaration is directed to a specific species and that Shoemaker et al. is not limited to applicants' species and has many other embodiments. However, what Shoemaker shows is rather irrelevant since Shoemaker et al. cannot be a reference against applicants' invention. This is why MPEP § 2131.02 is entitled "A Species Will Anticipate A Claim To A Genus." Thus, applicants' species anticipates Shoemaker et al. not the reverse as the Examiner contends.

In other words, an invention made later cannot anticipate an invention made earlier. The later Shoemaker et al. cannot anticipate or make obvious the earlier invention of applicants. Furthermore, applicants are entitled to a reasonably broad scope of claims based on the species. Accordingly, applicants respectfully request withdrawal of the rejection of their claims and a favorable action is earnestly solicited.

Respectfully submitted,



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